

REMARKS/ARGUMENTS

The Office action mailed on July 7, 2005 has been carefully reviewed and the included terminal disclaimer has been provided to thoroughly address each of the rejections provided by the examiner in that Office action. In addition, the following remarks are submitted to clarify and explain the importance of the above amendments and to support a finding by the examiner that the claims are in a form warranting allowance of this case. Accordingly, the undersigned respectfully requests reconsideration by the examiner in this case.

The examiner had rejected claims 1-19 under 35 U.S.C. §101 as claiming the same invention as U.S. Patent No. 6,170,264, such that statutory double patenting exists. The examiner had additionally rejected claims 1-66 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent Nos. 6,170,264, 6,389,814, 6,598,398 and 5,680,764. The examiner goes on to clearly set forth the basis for providing these rejections.

Furthermore, the examiner suggested (at page 3 of the Office action) that "a timely filed terminal disclaimer in compliance with 37 CFR §1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application."

Applicant has included with this response a terminal disclaimer relative to each of the patents listed in this obviousness-type double patenting rejection. Accordingly, claims 20-66, which were only rejected based on obviousness-type double patenting, should now be in a form warranting allowable status.

Additionally, applicant has carefully compared claims 1-19 with the claims of U.S. Patent No. 6,170,264. Applicant acknowledges that these claims are similar in many respects, but respectfully submits that they do not claim "the same invention." In particular, claim 1 requires that the oxygen enriched air enter the fuel combustor

"through an oxygen enriched air inlet adapted to deliver substantially H₂O free oxygen enriched air into said fuel combustor" (claim 1, lines 11-13). This language provided in quotation marks above is not contained in claim 1 of U.S. Patent No. 6,170,264. Thus, claim 1 of this application, while similar in many respects to claim 1 of U.S. Patent No. 6,170,264, is not identical. Rather, it includes all of the limitations of claim 1 of U.S. Patent No. 6,170,264 and additionally includes the limitation provided above in quotation marks.

Applicant notes that the included terminal disclaimer, when applied to claim 1, should remove any "obviousness-type double patenting" rejection. Accordingly, claim 1 should be in a form warranting allowable status. Claims 2-12 depend from claim 1 and should thus warrant allowable status for the reasons specified above with respect to claim 1.

Independent claim 13, while very similar to claim 13 of U.S. Patent No. 6,170,264, includes the same additional limitation specified above with respect to claim 1. Accordingly, claim 13 should now also be in a form warranting allowable status. Claims 14-16 depend from claim 13 and thus should also be in a form warranting allowable status.

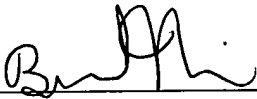
Claim 17, while similar to claim 17 of U.S. Patent No. 6,170,264, is different in that it includes the same limitation quoted above with respect to claim 1. Accordingly, claim 17 should now also be in a form warranting allowable status. Claims 18 and 19 depend from claim 17 and should thus also warrant allowable status.

Finally, applicant notes that this application included claims 67-72 which did not appear to receive any rejection in the most recent Office action. Applicant respectfully submits that claims 67-72, while closely related to claims 19-23 of U.S. Patent No. 6,598,398 (and in the case of claim 72, similar to claim 1 of U.S. Patent No. 6,598,398), differ in a manner similar to the differences described above with respect to claims 1-19, such that statutory double patenting does not exist.

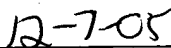
With the presence of the terminal disclaimer described in detail above, applicant respectfully submits that claims 67-72 should be in a form warranting allowable status.

In view of the foregoing, it is respectfully requested that the examiner pass this case to issue. If, upon consideration, the examiner believes further issues remain outstanding or new ones have been generated, the undersigned requests that the examiner call the undersigned to set up a personal or telephone interview with the undersigned to resolve any such remaining issues.

Respectfully Submitted:



Bradley P. Heisler
Applicant's Attorney
Telephone (916) 781-6634
Registration No.: 35,892



Date